

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-580

October 19, 2001

WORLDCOM, INC.
Request for Waiver of Section
9(B) of Chapter 81

ORDER

Welch, Chairman; Nugent and Diamond, Commissioners

I. SUMMARY

On August 21, 2001, WorldCom, Inc. filed a request for a waiver of section 9(B) of Chapter 81 of the Commission's rules. WorldCom claims the request is necessary to implement its proposed "High Toll Fraud Monitoring Program" (fraud prevention process) in the State of Maine. The proposed fraud prevention process would allow WorldCom to block 1+ access to its toll network in situations where a customer's calling pattern deviates from certain standards. In this Order, we defer ruling on WorldCom's request so that we may obtain additional information on its proposed fraud prevention program. A hearing will be scheduled in the near future for this purpose.

II. STANDARDS FOR GRANTING AN EXEMPTION UNDER SECTION 14(A)

The Commission may grant a utility's request to be exempt from one or more requirements of Chapter 81 for all or a portion of the utility's service territory upon finding that compliance would be unduly burdensome and that granting the request would not undermine the purposes of the rule. The rule further requires that a request for exemption be in writing and contain a complete explanation and justification for the exemption; the suggested alternative procedure, if any; and a description of how the request would not undermine the purposes of the rule.

III. WORLDCOM'S REQUEST

According to WorldCom, section 9(B) of Chapter 81, which requires 14 days notice be provided to residential customers prior to disconnection, provides an "unacceptably large window of opportunity to perpetrators of fraud" to commit fraudulent acts. WorldCom proposes its fraud prevention process as an alternative to the requirements of section 9(B).

Under WorldCom's proposed fraud prevention process, a "temporary restriction"¹ on a customer's ability to place long distance calls through WorldCom's network is implemented where usage patterns suggest the possibility of fraud. When WorldCom sees such a pattern, it attempts to contact the customer by telephone to verify the usage. If contact is made, usage is verified, and the customer has good payment history,² no block is placed. If WorldCom is unable to make contact with the customer, but is aware that the customer has a neutral payment history,³ a letter is sent to the customer requesting that the customer contact the company. The letter notifies the customer that a block will be placed on the customer's line unless the customer calls an 800 number to verify the usage. If the customer does not respond, a block is placed on the line. If the customer does respond and verifies the usage, but has no previous payment history or is not current with his or her payments, the customer is asked to make a payment in the amount of the service that has been used to date, but has not yet been billed. A block is placed on the line until such payment is received. Blocks are removed when the customer verifies usage and/or pays the unbilled charges for usage as well as any past due amounts.

WorldCom states in its waiver request that it will execute the fraud prevention block only when circumstances clearly indicate a lack of willingness on the customer's behalf to pay for usage. WorldCom further states that the proposed call block process is based on extensive experience and thorough research, and it believes that the process is not only necessary, but also fair and reasonable. WorldCom estimates that the proposed process will impact less than 1% of its customers on a monthly basis.

IV. DISCUSSION

We deliberated WorldCom's request on October 17, 2001, and decided that we could not approve the request as submitted as it does not provide sufficient detail. In considering a waiver from a legal requirement, it is imperative that we have a clear understanding of the actions to which the waiver would apply, both to enable us to make an informed decision on whether the waiver is warranted, and to allow all concerned to know what conduct is covered by the waiver should it be granted. While WorldCom's request gives some sense of how its "temporary restriction" process would work, it is far from a complete description.

Specifically, our concerns include:

¹ The Consumer Assistance Division (CAD) considers the "temporary restriction" WorldCom refers to as a "disconnection of service." The temporary restriction prohibits a customer from making 1+ calls over WorldCom's network, which is viewed by the CAD as the functional equivalent of a disconnection of service.

² WorldCom did not specify the criteria it would use to determine "good payment history."

³ WorldCom defines "neutral payment history" as a customer with tenured local phone service and no previously established unusual calling patterns.

- WorldCom's request identified four categories of customer payment histories, namely, good, poor, neutral, and non-existent.⁴ While offering some examples of how the process works for the different categories, the request failed to specify all of the steps in the process, and the timetables for executing those steps, for each of these categories. That information is critical if we are to understand exactly what we are being asked to waive.
- WorldCom indicated that it sends a letter when it "has a customer's billing name and address," but provided no information as to why, and how often, it cannot obtain that information and is thus unable to send a letter or whether it uses some alternative procedure in those instances.
- WorldCom did not provide the criteria used to establish a "good payment history" for customers in situations where the fraud prevention process will be implemented. Likewise, WorldCom did not provide the criteria used to determine that a customer has a "poor payment history."
- WorldCom did not provide any information describing how it determines that a usage pattern suggests the possibility of fraud, thereby triggering the "fraud prevention program."⁵
- WorldCom did not provide information to explain how it would treat "new" customers for whom WorldCom does not have past usage or payment history.

In addition to the above issues, we are also concerned that WorldCom does not notify customers of the fraud prevention process when they sign up for service. It is not clear to us why the company does not give such prior notification, as well as some idea of the conduct that will trigger a suspension of service. In situations involving a family or personal emergency, customers may use an unusual amount of toll service contacting family and friends and may unknowingly trigger the fraud prevention process. To be disconnected and forced to find an alternative means of making toll calls under these circumstances may work a significant hardship. Thus, even if we conclude that WorldCom

⁴ We are not clear from the request what the difference is between a "neutral" and "non-existent" payment history.

⁵ In addition to a lack of clarity about how the process is designed to work, we are concerned that WorldCom may not always be following the specific procedures described in the request for a waiver. In a complaint filed with the Commission's Consumer Assistance Division in June of 2001, it is alleged that the complainant's service was "suspended" without any prior contact by WorldCom. See Graham Complaint, 2001-10208. This needs to be addressed by WorldCom.

has a legitimate need for a waiver, it should be crafted in such a way as to minimize the potential harm to telephone users.

For these reasons, we find that we cannot approve WorldCom's request for a waiver at this time. We will, however, convene a hearing in the near future on this matter at which WorldCom can address the concerns stated above and provide any additional information we need to evaluate its request for a waiver.

Dated at Augusta, Maine, this 19th day of October, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
Diamond

COMMISSIONER DISSENTING: Welch (see attached)

Dissent of Chairman Welch

I dissent. I would grant the exemption sought here by WorldCom.

I base my recommendation on two aspects of the service for which WorldCom requests the exemption:

First, WorldCom is under no obligation whatever to provide toll service in Maine.

Second, there are an enormous number of alternatives to WorldCom toll service readily available to customers

The standard for granting an exemption is whether the requirement from which the exemption is sought is “unduly burdensome,” and whether granting the exemption would “undermine the purposes of the chapter.” The purposes of the chapter, as stated in section 1, are to assure safe and adequate provision of utility service; to assure that service is not disconnected or refused unreasonably; and to assure the utility's right to collect proper bills for residential utility service.

Both standards need to be viewed in context. Chapter 81 was designed to deal with utility services. Implicitly supporting the many requirements dealing with the ability of the utility to disconnect is that the government has an interest in allowing people to keep their service except in the clearest cases of abuse or non-payment (there would be no justification, for example, for requirements similar to Ch. 81 for services such as book of the month club, or athletic club membership); and also implicit is the notion that, if the utility disconnects, the only source of the same service is the same utility: if the same service is available from other sources, the discussions in Chapter 81 concerning reconnection, payment arrangements, and medical exemptions become largely, though not entirely, irrelevant.

There are many alternatives for intrastate toll, ranging from pre-paid calling cards available at supermarkets to dozens of interexchange carriers to the local telephone companies. Both the exemption standard in section 14 of Ch. 81 and the “purposes of the rule” language in section 1 should be read much more permissively where toll services are involved than where basic local service is at stake, where disconnection is likely to have the consequence that the customer is left with no telephone service at all.

WorldCom has made a sufficient case that the requirements of Ch. 81 from which it seeks exemption are indeed unduly burdensome. WorldCom points to a specific and serious problem: namely, toll fraud, where customers use toll services without the intention of paying for them. Moreover, the application of Ch. 81 would allow a customer intending to defraud WorldCom a virtually free shot at doing so, both in the notice requirements and the many opportunities to delay “disconnection.”

The procedures that WorldCom has adopted, involving attempts to contact the customer, and seeking immediate payment only where MCI lacks a reasonable basis

for concluding that the customer is likely to pay the bill, are reasonable. They are necessarily the procedures that I might have designed: for example, it seems a bit harsh to require advance payment where spiked usage is detected where there is no payment history at all, as opposed to adverse payment history. Moreover, as my colleagues correctly suggest, the particular procedures used by WorldCom are not stated as clearly as they might be. But I do not think that they are outside the bounds of reasonable commercial practice, nor do I find any reason to conclude that WorldCom would apply their procedures in a way designed to inconvenience or aggravate customers rather than to detect and limit toll fraud. A business may quite reasonably decline to extend unlimited credit to first-time customers, and I see no particular public policy objective served by placing a greater obligation on WorldCom.

Nor would any of the purposes of Ch. 81 be undermined by granting the exemption. Chapter 81 in section 1 says that the service should not be disconnected “unreasonably.” The disconnection needs to be judged in the overall context, and in this context – characterized by the easy availability of customer choice and a genuine and legitimate interest by WorldCom in controlling toll fraud – the disconnection processes described in the exemption request are indeed reasonable and do not in any way frustrate the basic purposes of Ch. 81.

Finally, if we continue to insist on the application of Ch. 81 to toll services, notwithstanding this request for exemption, there may be a cost to Maine’s toll customers. WorldCom has no obligation to provide toll services at all in Maine, and certainly no obligation to provide them at prices that reflect the success of the toll fraud reduction programs that it has instituted elsewhere. In a market as competitive as this, why should WorldCom not be permitted to design, price, and offer a service that allows WorldCom to take quick action to limit its losses where toll fraud is a possibility (even where it is not proven)? If customers do not want to risk the temporary inconvenience of not being able to use WorldCom if for some reason they trigger the disconnection process WorldCom has outlined (something which, according to WorldCom’s uncontroverted assertion, occurs to fewer than 1% of customers in any given month), they are free – and able – to go elsewhere. We do not advance the public interest by depriving WorldCom of that opportunity to market, or by depriving its customers in Maine of the potentially better price WorldCom might offer. Thus, while I am pleased that my colleagues admit the possibility that, with further support, they might grant the exemption, I would burden WorldCom no further and grant the exemption based on the current record.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.